

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

June 7, 2005

The Rhode Island Ethics Commission held its 11th meeting of 2005 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, June 7, 2005, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair James C. Segovis
George E. Weavill, Jr., Secretary Frederick K. Butler*
Richard E. Kirby* Barbara Binder
James V. Murray Ross Cheit**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Jason Gramitt, Staff Attorney/Commission Education Coordinator; Staff Attorneys Dianne L. Leyden and Macall Robertson; and, Commission Investigators Steven T. Cross, Peter J. Mancini, and Michael Douglas.

At approximately 9:03 a.m., the Chair opened the meeting. The first order of business was to approve the minutes of the Open Session held on May 17, 2005. Upon motion made by Commissioner Binder,

and duly seconded by Commissioner Kirby, it was unanimously

VOTED: To approve the minutes of the Open Session held on May 17, 2005.

AYES: George E. Weavill, Jr., Richard E. Kirby, James V. Murray, Ross Cheit, Barbara Binder, and James Lynch, Sr.

ABSTENTION: James C. Segovis.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date.

The first advisory opinion was that of Andres Blanco, a Senior Health Services Policy and Systems Specialist employed by the Rhode Island Department of Health. The petitioner was present. After the Commission Staff recommendation was presented by Staff Attorney Leyden, the petitioner commented that in May of 2004 he was asked to develop and maintain a database for Family Voices of RI. Upon motion made by Commissioner Weavill, duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Andres Blanco, a Senior Health Services Policy and Systems Specialist

employed by the Rhode Island Department of Health.

AYES: George E. Weavill, Jr., Richard E. Kirby, James C. Segovis, James

V. Murray, Ross Cheit, Barbara Binder, and James Lynch, Sr.

The next advisory opinion was that of William L. Bernstein, a Town of Glocester Probate Court Judge. The petitioner was not present. After the Commission Staff recommendation was presented by Staff Attorney Leyden, Commissioner Weavill stated that he assumed that the petitioner was appointed by the Town Council. Staff Attorney Leyden replied that this was correct.

Commissioner Weavill informed the Commission that zoning appeals could be heard before a Zoning Board and a Town Council. He stated that this petitioner only inquired whether he could represent his client before the Zoning Board and that the staff recommendation provides that the petitioner may represent clients before municipal boards and commissions. Commissioner Weavill asserted that he did not support the petitioner appearing before the Town Council. Commissioner Binder inquired whether such language should be added to the opinion.

Commissioner Kirby pointed out that this approach would be contrary to Advisory Opinion 99-19, which is cited in the staff recommendation. He observed that the parenthetical description of

Advisory Opinion 99-19, provided in the staff recommendation, reveals that the Commission, in that opinion, permitted the petitioner to represent clients before the Cranston City Council, the Planning Commission, and the Zoning Board of Review. Commissioner Kirby then pointed out possible differences in the appointment authority for probate judges in Cranston versus Glocester.

Staff Attorney Gramitt stated that the language of the advisory opinion could be amended so that the opinion only addressed whether the petitioner may appear before the Zoning Board, and that the opinion could also include language advising the petitioner to seek additional advice about appearing before other municipal boards or commissions. Commissioner Segovis indicated that he agreed with this amendment to the opinion.

Commissioner Cheit inquired whether this language was necessary since each advisory opinion is limited to its facts. Commissioner Kirby replied that Advisory Opinion 99-19 is cited as an authority in the draft advisory opinion prepared by the Commission Staff. Commissioner Kirby also pointed out that there is value to having consistency in the advice provided in advisory opinions because they serve as persuasive precedent and officials take them into consideration.

Commissioner Cheit then asked Staff Attorney Gramitt for his perspective on advisory opinions serving as precedent. Staff

Attorney Gramitt responded that the Commission Staff recommends that the advice provided by the Commission in advisory opinions to be consistent. He suggested that the Commission amend the opinion to conform to past advice or that the Commission explain why it decided not to have this opinion conform. Commissioner Weavill also indicated that he would like the opinion to include the limiting language offered by Staff Attorney Gramitt.

***At approximately 9:20 a.m., Commissioner Butler arrived.**

Commissioner Kirby stated that an advisory opinion is limited to the facts and question presented by the petitioner. He suggested that this opinion be more focused and not include advice beyond the question presented by the petitioner. Commissioner Weavill recommended that the language of the opinion be tightened as recommended by Staff Attorney Gramitt and that language be added to the opinion instructing the petitioner to come back to the Commission for more advice if he wants to appear before other municipal boards or commissions in addition to the Gloucester Zoning Board.

Commissioner Butler stated that he is abstaining from the vote on the advisory opinion request of William L. Bernstein's because he just arrived to the meeting.

Upon motion made and duly seconded, it was unanimously

VOTED: To issue an amended advisory opinion, attached hereto, to William L. Bernstein, a Town of Gloucester Probate Court Judge, that will state that the petitioner may appear only before the Gloucester Zoning Board and that will recommend that the petitioner seek further advice from the Commission should he pursue appearing before any other municipal boards or commissions.

AYES: George E. Weavill, Jr., Richard E. Kirby, James V. Murray, Ross Cheit, Barbara Binder, James C. Segovis, and James Lynch, Sr.

ABSTENTION: Frederick K. Butler.

The next advisory opinion was that of the Honorable Grace Diaz, a legislator serving in the Rhode Island House of Representatives.

*** At approximately 9:24 a.m., Frederick K. Butler recused himself from the Commission's consideration of the advisory opinion request of Grace Diaz and left the room.**

The petitioner was not present. After the Commission Staff recommendation was presented by Staff Attorney Gramitt, Commissioner Cheit commented that he felt uncomfortable with the paragraph in the draft advisory opinion prepared by the Commission Staff regarding the economic impact of the legislation on the petitioner. He noted that the petitioner was not present and that he

wanted to ask her about how the legislation would impact her.

Commissioner Kirby inquired whether the class exception requires the comparison of the 1,400 family child care providers impacted by the legislation to the general public. Commissioner Segovis voiced his opinion that there is a foreseeable impact here and that he was uncomfortable with the petitioner voting on legislation that affects her own livelihood. Commissioner Weavill stated that he had similar concerns and that he viewed the legislation as creating a class that did not already exist. Commissioner Kirby stated that he agreed with Commissioner Weavill's remarks.

Chair Lynch indicated that he also had concerns and was sorry that the petitioner was not present. He stated that this legislation is the beginning of a long process that will lead to financial gain to the petitioner. Commissioner Binder indicated that she agreed with these comments.

Commissioner Weavill made a motion to deny issuing the advisory opinion drafted by the Commission Staff. Commissioner Segovis duly seconded this motion.

Commissioner Cheit inquired about the advice the petitioner would receive if the Commission voted to deny issuing the opinion. Staff Attorney Gramitt stated that she would have had safe harbor until today based upon the draft advisory opinion and that going forward

she would be acting at her own peril. Commissioner Cheit pointed out that there were several questions in the petitioner's request for an advisory opinion that were not addressed in the staff recommendation. Staff Attorney Gramitt stated that he discussed all of these issues with the petitioner and the opinion addressed the issue that was most important to the petitioner. Commissioner Cheit inquired whether the other issues were put on the back burner for the time being. Staff Attorney Gramitt confirmed that this was the situation and that the petitioner was free to ask the Commission to address these issues in the future.

Upon the existing motion made and seconded, it was unanimously

VOTED: To deny issuing the advisory opinion, attached hereto, to the Honorable Grace Diaz, a legislator serving in the Rhode Island House of Representatives.

AYES: George E. Weavill, Jr., James C. Segovis, Richard E. Kirby, James V. Murray, Ross Cheit, Barbara Binder, and James Lynch, Sr.

RECUSAL: Frederick K. Butler.

* At approximately 9:33 a.m., Frederick K. Butler returned to the meeting.

The next advisory opinion was that of David S. Iwuc, Mayor of the

Town of Cumberland. The petitioner was not present. Commissioner Kirby shared that he was once Assistant Town Solicitor for Cumberland and would be recusing from this matter. He also informed the Commission that he received a phone call about the hearing for this advisory opinion from the Mayor's office. He informed that during this telephone conversation he informed that it would be best if the Mayor attended the hearing and advised that a call be made to the Ethics Commission office to obtain information. Commissioner Kirby provided the phone number of the Ethic Commission office. Additionally, Commissioner Kirby pointed out that he is aware of the letter from the Mayor's office that was faxed to the Commission Staff today regarding this opinion.

Staff Attorney Gramitt stated that he did not receive any messages about whether the Mayor or his representative would attend today. Commissioner Murray suggested that the Commission go forward as the Mayor did not contact the Commission. Commissioner Kirby stated that he also provided the time of today's meeting, 9 a.m. in his telephone communication, and recommended that a call be made to the Commission Staff if a later time is needed for the hearing of the Mayor's advisory opinion request.

Commissioner Cheit recommended that the Commission hear this advisory opinion last incase the petitioner arrives late. The Commission agreed and moved to the next advisory opinion.

The next advisory opinion was that of Lyman J. Williams, a candidate for appointment to the City of Providence Board of Canvassers. The petitioner was not present. The Commission Staff recommendation was presented by Staff Attorney Gramitt. Upon motion made and duly seconded by Commissioner Butler, it was unanimously

VOTED: To issue an amended advisory opinion, attached hereto, to Lyman J. Williams, a candidate for appointment to the City of Providence Board of Canvassers.

AYES: George E. Weavill, Jr., James C. Segovis, Richard E. Kirby, James V. Murray, Ross Cheit, Barbara Binder, Frederick K. Butler, and James Lynch, Sr.

The Commission next returned to the advisory opinion of David S. Iwuc, Mayor of the Town of Cumberland. Staff Attorney Gramitt informed the Commission that Commission Investigator Cross had just checked with the Staff to confirm whether the Mayor's office had left any new messages with Commission Staff today and that none were left. The Commission decided to hear the opinion.

*** At approximately 9:40 a.m., Commissioner Kirby again stated that he was recusing from the Commission's consideration of this request and left the room. At approximately 9:43 a.m., Commissioner Kirby returned to the hearing room and sat in the seating area for the general public and did not participate in the hearing.**

Staff Attorney Gramitt presented the Commission Staff recommendation. He mentioned that he received a facsimile this morning from the Mayor's office requesting the Commission provide a list of experienced contract negotiators from which the Town of Cumberland may choose to negotiate on behalf of the Town. Staff Attorney Gramitt indicated that he provided this facsimile to the Commission this morning. He noted that the Commission Staff recommendation does not cover this request and that it is not the Commission's role to make such a recommendation.

Commissioner Segovis inquired whether this function was the responsibility of the Cumberland Town Council. Staff Attorney Gramitt replied that this would depend upon the Cumberland Town Charter and that he is not aware of whether this is permissible under the Charter. Commissioner Weavill indicated that he was aware of the relationship between the Mayor and the Town Council from local newspapers and stated that this appointment may be problematic due to this relationship.

Upon motion made by Commissioner Binder, duly seconded by Commissioner Segovis, it was unanimously

VOTED: To issue the advisory opinion, attached hereto, to David S. Iwuc, Mayor of the Town of Cumberland.

AYES: George E. Weavill, Jr., James C. Segovis, James V. Murray, Ross Cheit, Barbara Binder, Frederick K. Butler, and James Lynch, Sr.

RECUSAL: Richard E. Kirby.

Chair Lynch pointed out that in the advisory opinion request, Mayor Iwuc inquired whether it would be unethical for him to endorse the finished contract between the Town of Cumberland and the Fraternal Order of Police Lodge #14 as required in the Town Charter even if he did not participate in the negotiation of the contract. Staff Attorney Gramitt stated that the staff recommendation does not address this issue and that this issue is not a relevant inquiry until it is pursued as an option by the Town of Cumberland. Commissioner Segovis pointed out that this question goes back to whether or not the Mayor should be involved with the contract. Staff Attorney Gramitt indicated that the Mayor is required by the opinion to fully recuse from participating in the negotiation of the contract.

*** At approximately 9:46 a.m., Commissioner Kirby returned to the meeting.**

At approximately 9:47 a.m., upon motion made by Commissioner Segovis and duly seconded by Commissioner Butler, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (a)(4), for the discussion of investigative proceedings regarding allegations of misconduct and/or the discussion of litigation, and approval of the minutes relating to such discussions, to wit:

a.) Motion to approve the minutes of the Executive Session held on May 17, 2005.

At approximately 10:00 a.m., the Commission returned to Open Session.

The next order of business was sealing the minutes of the Executive Session held on June 7, 2005. By consensus, the Commission decided not to seal them.

The next order of business was the Director's Report. Executive Director Willever discussed the status of the pending complaints before the Commission and the agenda for the next Commission meeting. In response to Commissioner Weavill's inquiry into the status of the lead paint advisory opinions, Executive Director Willever stated that they were withdrawn. Executive Director Willever also informed the Commission that the COGEL Conference is scheduled this year for December 4th. He shared that he was asked to be a moderator at the conference and that Investigator Cross was asked to be a panelist. He also noted that he, Staff Attorney Gramitt, and

private attorney Christopher Gontarz, were presenting a seminar at the Rhode Island Bar Association's annual meeting this week. He stated that he would use these opportunities to respond to Commissioner Butler's request to discuss how the Commission was formed and that he will also reply to Commissioner Binder's request to include the changes made to Commission policy as a result of the advisory opinion process.

The next order of business was New Business. Chair Lynch asked the

Commissioners whether they had any requests to eliminate or change Commission meeting dates this summer to accommodate for vacation. Commissioner Cheit inquired whether the Commission Staff are on vacation at a particular time. Executive Director Willever stated that he did not have this information with him and that this should not impact the Commission's decision. Commissioner Segovis asked for the dates of the Commission meetings planned for July and August. Chair Lynch informed the Commission that the dates are July 12th and 26th and that the August dates are the 16th and 30th.

Commission Segovis suggested eliminating the August 16th date as he will be traveling at that time. Commissioner Kirby suggested selecting a July date as a target for getting through the advisory opinion backlog. Chair Lynch responded that the Commission is in good shape with the advisory opinion requests. Executive Director

Willever informed that the Commission Staff have an internal deadline of the end of this summer to get through the pending advisory opinion requests.

Commissioner Weavill shared that he cannot attend the July 12th meeting. Legal Counsel Managhan informed that she is going to Europe at the end of August and that she could get back for the August 30th meeting if necessary. Chair Lynch replied that the Commission could get someone to fill in for her for that meeting. Commissioner Segovis suggested that the August 30th meeting could also be moved to another date, such as August 31st. Legal Counsel Managhan said that a meeting on the 31st would work out with her plans. Chair Lynch indicated that changing a meeting date would require determining whether or not the conference room will be available for that date. Staff Attorney Leyden left the room to determine whether the room would be available on August 31st and returned to report that it was available.

Commissioner Weavill stated that Tuesday works well for meetings dates and that usually when the day of the week is changed for a meeting it is more difficult to obtain a quorum. Chair Lynch agreed and urged that the meetings be consistently on Tuesdays. Commissioner Weavill noted that the Commission could see if former Legal Counsel, William J. Conley, could attend the August 30th meeting.

Chair Lynch confirmed that the Commission was in agreement that the August 16th meeting would be eliminated and that the July meetings and August 30th meeting will remain the same. Staff Attorney Gramitt indicated that the Commission Staff can work with the Commissioners to work around their specific vacation plans to obtain a quorum.

Legal Counsel Managhan asked whether the COGEL conference will interfere with the Commission's December 6th meeting. Executive Director Willever responded that it would interfere. Chair Lynch commented that the Commission will have to reschedule that meeting. Commissioner Kirby recommended that this meeting be rescheduled when the date is closer.

The next order of business was discussion of Commission Regulations. Chair Lynch informed the Commissioners that they had this information from past meetings and inquired whether they had any new ideas. Commissioner Segovis asked Chair Lynch to go over the topics that were proposed. Chair Lynch recited the topics. Chair Lynch shared that he will have a packet to pass out in the future and encouraged the other Commissioners to do the same so that the Commission Staff can put all the proposals together.

Commissioner Segovis recommended that the Commission deal with the confidentiality issue at the next meeting as it has been a proposal for some time. Chair Lynch asked the Commission Staff to add this

item to the agenda under the item of Commission Regulations for the next meeting.

Executive Director Willever noted that the revolving door topic and the nepotism topic are related and that both were mentioned by the Commission at the last meeting. He also reminded the Commission that regulatory changes will require the Commission to meet the formal hearing and notice requirements.

Commissioner Kirby stated that if lobbying is required on these proposals, that the Commission can give the Commission Staff advice on how to conduct the lobbying. Commissioner Weavill suggested addressing the appointment of family members to jobs within the judicial and legislative branches of Rhode Island government without a process in place to prevent violations of the Code of Ethics.

Legal Counsel Managhan reminded the Commissioners that she needs their feedback on the draft order she is circulating for Aponte. She stated that she did not provide this order to Commissioner Segovis as he was not present at the meeting at which the Commission heard this adjudication. She also indicated that she will need to file this order shortly. Commissioner Binder informed Legal Counsel Managhan that she did not receive this order.

At approximately 10:17 a.m., upon motion made by Commissioner

**Kirby and duly seconded by Commissioner Butler, it was
unanimously**

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.
Secretary